

**BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS**

In the Matter of the Application of:

DRIVER FUNERAL SERVICE, L.L.C.

ORDER ISSUING A PROBATED PROVIDER LICENSE

COMES NOW, the Missouri State Board of Embalmers and Funeral Directors (the “Board”) and pursuant to Section 324.038, RSMo¹, issues this order granting a **PROBATED PROVIDER LICENSE** to Driver Funeral Service, L.L.C. (“Driver Funeral” or “Licensee”) located at 102 South Interstate Drive #23, Miner, Missouri 63801.

As set forth in Section 324.038, RSMo, Licensee may submit a written request for hearing to the Administrative Hearing Commission seeking review of the Board’s decision set forth in this Order. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date the Board mails this Order to Licensee. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Any such request should set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to Licensee’s profession. If such review is

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The hearing will be on the record and recorded by a court reporter. At the hearing, Licensee shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board and make legal argument to the Commission. Following the hearing, the Administrative Hearing Commission will issue an order including findings of fact, conclusions of law and a decision based on the evidence admitted at the hearing. A copy of the Administrative Hearing Commission's order will be delivered to the parties. Chapter 536, RSMo, sets forth the procedures for review of the order of the Administrative Hearing Commission.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Section 324.038.2, RSMo. Should Licensee make written request for review of this Order, the terms and conditions of this Order shall remain in full force and effect unless and until such time as the Administrative Hearing Commission or reviewing court orders otherwise.

Relevant Statutes

1. Section 324.038 authorizes the Board to issue a license subject to probation in lieu of denial and states:

324.038. 1. Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. If the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.

2. Section 333.061.1, RSMo, states that “[N]o funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.”

3. Section 333.330, RSMo, authorizes the Board to deny an application for a provider's license and states, in relevant portion:

1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

* * *

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

* * *

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating

preneed who is not licensed or registered and currently eligible to practice thereunder;

* * *

(14) Violation of any professional trust or confidence;

Parties and Background

4. The Board is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo and vested with the authority to execute and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.

5. Driver Funeral Service, L.L.C is a Missouri limited liability corporation, in good standing.

6. Driver Funeral holds Missouri funeral establishment license number 2010015135.

7. Driver Funeral's Missouri funeral establishment license is current and active and currently on probation for a period of two years that commenced on May 17, 2010. Attached to this Order as Exhibit A is a true and accurate copy of the Board's Order placing the funeral establishment license on probation (the "Driver Establishment Probation Order"). The Board incorporates the Driver Establishment Probation Order into this Order as if fully set forth herein.

8. Driver Funeral applied for a Missouri preneed provider license by filing its "Provider Application" with the Board which shows July 16, 2010 as the date Driver Funeral signed the application before a notary public.

Basis for Probation

9. The Board cites as the basis for this probation the conduct of Driver Funeral in August 2009 holding out as and performing the functions of a licensed funeral establishment when Driver Funeral held no such license as is set forth in paragraphs 6 through 20 of the Driver Establishment Probation Order attached and incorporated by reference.

10. Driver Funeral's conduct of operating as a funeral establishment when it was not so licensed provides basis for the Board to deny Driver Funeral's application for a preneed provider license pursuant to cause set forth in Sections 333.330.2(4), (5), (6), (7), (11), and (14).

11. The Board finds that issuance of a probated provider license, subject to certain terms and conditions, in lieu of denial, will ensure protection of the public.

Issuance of Probated License Subject to Terms and Conditions

The Board, in lieu of denial, hereby issues a preneed provider license to Driver Funeral Services, LLC, located at 102 South Interstate Drive #23, Miner, Missouri 63801, on **PROBATION** for a period to run concurrently with the probation imposed on Driver Funeral's funeral establishment license by the Driver

Establishment Probation Order attached as Exhibit A to this Order (the “Disciplinary Period”), and subject to the terms and conditions contained in this Order and set forth below.

Terms and Conditions of Probation

12. Licensee shall comply with the following terms and conditions of probation during the Disciplinary Period:

- a. Licensee shall keep the Board informed at all times of its current address and telephone number at each place of business. If there is a change in address or telephone number, Licensee shall inform the Board, in writing, no later than 5 days after the change occurs;
- b. Licensee shall timely renew all licenses issued by the Board including its funeral establishment and preneed provider licenses and comply with all statutes, regulations and reporting requirements to maintain these licenses in a current and active status;
- c. Licensee shall comply with all provisions of Chapters 194, 333 and 436, RSMo, all regulations imposed under the authority of these statutes, and all laws and regulations of any state including Missouri and all other states and territories of the United States, and all federal laws and regulations related to the operation of a funeral related business and applicable to persons and entities engaged in the funeral and death care industry;

- d. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- e. Licensee shall not allow any person to serve as a funeral director apprentice or embalmer apprentice without the consent of the Board. If any person seeks to serve as an apprentice at Licensee's funeral establishment and under the supervision of Licensee, Licensee shall make written request to the Board requesting approval of the apprenticeship before the commencement of any such apprenticeship;
- f. Upon the Board's request, Licensee shall appear before the Board or its representative for personal meetings;
- g. Licensee shall accept and cooperate with visits, whether scheduled or unannounced, from the Board's duly authorized representatives to monitor Licensee's compliance with these terms and conditions;
- h. Upon request by the Board or its designee, Licensee shall submit any and all records requested to show compliance with these terms and conditions. These records shall be timely submitted per the request of the Board; and
- i. Licensee shall submit written reports to the Board on or before January 1 and July 1 of each year during the Disciplinary Period in which Licensee shall state truthfully whether it has fully complied

will all terms and conditions of probation and shall fully describe any non-compliance.

13. Upon the expiration of the Disciplinary Period and successful completion of the probation, Driver Funeral's provider license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Driver Funeral has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Driver Funeral's provider license.

14. The Board shall enter no order imposing further discipline on Driver Funeral's provider license without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

15. If the Board determines that Driver Funeral has violated a term or condition of his Order, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

16. If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to

determine whether a violation of the terms and conditions of probation occurred and, if so, may impose further discipline on the provider license of Driver Funeral. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of probation occurred.

17. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: March 25, 2011

Sandy Sebastian

Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors

BEFORE THE
MISSOURI STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS

In the matter of the application of:

DRIVER FUNERAL SERVICE, LLC

**ORDER OF THE MISSOURI STATE BOARD
OF EMBALMERS AND FUNERAL DIRECTORS
ISSUING A PROBATED FUNERAL ESTABLISHMENT LICENSE
TO DRIVER FUNERAL SERVICE, LLC**

Comes now the Missouri State Board of Embalmers and Funeral Directors (the "Board") and hereby issues its ORDER granting a PROBATED funeral establishment license for a Function C and D establishment to Driver Funeral Service, LLC ("Driver Funeral Service") located at 102 South Interstate Drive #23, Miner, Missouri 63801 pursuant to the provisions of Section 324.038, RSMo (2000).¹ As set forth in Section 324.038, RSMo, Driver Funeral Service may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the Board's decision to issue a probated funeral establishment license. Such written request must be filed with the Administrative Hearing Commission within 30 days of issuance of this order of the Board. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. Such request shall set forth that the applicant is qualified for nonprobated licensure pursuant to the laws and administrative regulations relating to his or her profession.

If such review is requested, a hearing shall be held pursuant to Chapter 621, RSMo. A Commissioner of the Administrative Hearing Commission will preside over the hearing. The

hearing will be on the record and recorded by a court reporter. At the hearing, Driver Funeral Service shall have the right to present testimony, call witnesses on its behalf, introduce evidence, cross-examine any witnesses called by the Board, and object to any evidence introduced by the Board. Following the hearing, the Administrative Hearing Commission shall issue findings of fact, conclusions of law and a decision based on all evidence admitted at the hearing. A copy of the findings of fact, conclusions of law and decision shall be delivered to the parties. Review of the decision of the Administrative Hearing Commission shall be pursuant to Chapter 536, RSMo.

If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the Board's decision shall be considered waived. Should Driver Funeral Service file a written request for review of this Order, the terms and conditions of this Order shall remain in force and effect unless or until such time as the Administrative Hearing Commission issues an Order to the contrary.

I.

Accordingly, the Board hereby states:

1. The State Board of Embalmers and Funeral Directors is an agency of the State of Missouri created and established pursuant to Section 333.151, RSMo, for the purpose of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436, RSMo.
2. Thelma Driver is a licensed funeral director and a licensed embalmer in the State of Missouri.
3. Prior to this Order, Driver Funeral Service, LLC in Miner was not a Missouri licensed funeral establishment.

¹Unless otherwise specified, all statutory references are to the Revised Statutes of

4. On or about April 3, 2010, Driver Funeral Service, LLC made application to the Board for a new funeral establishment license for a funeral establishment located at 102 South Interstate Drive #23, Miner, Missouri, 63801.

5. Driver Funeral Service, LLC has filed its articles of organization with the Missouri Office of the Secretary of State in conformance with the Missouri Limited Liability Company Act. Driver Funeral Service, LLC was created on July 6, 2007 and Thelma J. Driver is the registered owner.

6. Thelma J. Driver is the funeral director in charge of the Driver Funeral Service.

7. On or about August 25, 2009, the Board received information regarding an obituary that indicated Driver Funeral Service was in charge of arrangements following the death of Essie Lyvette Dudley. Driver Funeral Service was unlicensed at that time. The Board initiated an investigation.

8. Ms. Essie L. Dudley died on August 18, 2009.

9. Shortly thereafter, Essie B. Dudley, mother of Essie L. Dudley, met with Thelma Driver, discussed funeral plans for Essie L. Dudley, and gave Thelma Driver a \$2,000 down payment to cover the costs of Essie L. Dudley's funeral. Thelma Driver provided a general price list to Essie B. Dudley but never provided a formal written contract. Thelma Driver and Essie B. Dudley both signed an authorization to embalm the body of Essie L. Dudley.

10. Later, Essie B. Dudley went with Thelma Driver to the Fowler-Sullivan Funeral Home and picked out a casket for Essie L. Dudley's funeral.

11. On or about August 18, 2009, Thelma Driver telephoned Donald Weaver, owner and operator of Professional Director Services in St. Louis, Missouri and requested assistance

with the body of Essie L. Dudley. In response to this request, on August 20, 2009, Mr. Weaver, picked up the body of Essie L. Dudley from Barnes-Jewish Hospital and embalmed the body.

12. Thelma Driver purchased a casket from Fowler-Sullivan Funeral Home for \$375 and loaded it onto Driver's van on August 21, 2009.

13. Also on August 21, 2009, Thelma Driver called Angie Poole, manager of the Poplar Bluff Municipal Cemetery regarding the purchase of a grave for Essie L. Dudley. Ms. Poole provided Thelma Driver an interment permit for burial in this cemetery. On the permit, "Thelma" is identified as the person ordering the permit. Thelma Driver paid Ms. Poole for Essie L. Dudley's cemetery plot.

14. On August 23, 2009, Thelma Driver picked up the body of Essie L. Dudley from Mr. Weaver in a gray van. Thelma Driver transported the body to Driver Funeral Service in Parma, Missouri where the body was dressed and placed in the casket.

15. On August 24, 2009, an obituary for Essie L. Dudley appeared in the Daily American Republic newspaper that indicated, in pertinent part, that "Driver Funeral Services of Parma is in charge of the arrangements."

16. Subsequently, Essie B. Dudley went to Driver Funeral Service in Parma, Missouri and viewed the body of Essie L. Dudley. The body was then taken from Parma to a church in Poplar Bluff and finally for burial at the Poplar Bluff Municipal Cemetery.

17. The body of Essie L. Dudley was brought to the cemetery in a coach with the name of "Driver" on it.

18. Thelma Driver was present at the services for Essie L. Dudley.

19. On September 3, 2009, Jim Akers, Butler County Coroner, met with Thelma Driver regarding the death of Ms. Dudley. At that time, Jim Akers signed the death certificate

for Ms. Dudley, provided the certificate to Ms. Driver and requested that Ms. Driver provide him a copy of the death certificate.

20. Essie B. Dudley, during her interactions with Thelma Driver, was unaware that Thelma Driver was not affiliated with a licensed funeral establishment.

21. Section 333.061 provides that no funeral establishment shall be operated in Missouri unless it has been licensed by the Board.

22. Section 333.330.1 provides:

The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

23. Cause exists for the Board to refuse to issue the application of Driver Funeral Service for a funeral establishment license pursuant to § 333.330.2 (4), (5), (7), (11) and (14), which provide:

The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

...

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

...

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

...

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

...

(14) Violation of any professional trust or confidence[.]

24. Section 324.038.1 provides:

Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

25. Pursuant to the provisions of Section 324.038, RSMo, the Board hereby issues a probated funeral establishment license to Driver Funeral Service, LLC, located at 102 South Interstate Drive #23, Miner, Missouri, 63801. Such license is issued subject to the terms and conditions set forth below.

26. The Board issues this Order in lieu of denial of Driver Funeral Service, LLC's application for a funeral establishment license.

27. The Board has determined that this Order is necessary to ensure the protection of the public.

II.

Based on the foregoing, it is the Board's ORDER that Driver Funeral Service, LLC is issued a funeral establishment license and that license is placed on **PROBATION** for a period of **TWO (2) YEARS** (the "Disciplinary Period"), commencing on the date of this Order. During the Disciplinary Period, the funeral establishment shall be authorized to function as a licensed funeral establishment provided that it complies with all terms and conditions of the Disciplinary Period listed below.

Terms and Conditions of the Disciplinary Period

Terms and conditions of the Disciplinary Period are as follows:

- A. Driver Funeral Service, LLC shall keep the Board apprised at all times in writing of its current address and telephone number at each place of residence and business.
- B. Driver Funeral Service, LLC shall timely renew all funeral establishment licenses and timely pay all fees required for license and registration renewal and comply with all other requirements necessary to maintain these licenses and registrations in a current and active state.
- C. If, at any time within the Disciplinary Period, Driver Funeral Service, LLC changes its place of business or residence from the State of Missouri, ceases to be currently licensed as a funeral establishment under the provisions of Chapter 333, RSMo, or fails to keep the Board advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.
- D. Driver Funeral Service, LLC shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws,

rules and regulations related to the funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

E. Driver Funeral Service, LLC shall appear before the Board or its representatives for a personal interview upon the Board's request.

F. Driver Funeral Service, LLC shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.

G. Driver Funeral Service, LLC shall submit written reports to the Board by no later than **January 1** and **July 1** during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Order.

Upon the expiration and successful completion of the Disciplinary Period, Driver Funeral Service, LLC's funeral establishment license shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Driver Funeral Service, LLC has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Driver Funeral Service, LLC's funeral establishment license.

No order shall be entered by the Board pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

If the Board determines that Driver Funeral Service, LLC has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative

Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

If any alleged violation of this Order occurs during the Disciplinary Period, the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The Board has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

IT IS SO ORDERED.

Dated: May 17, 2010
Becky Dunn

Becky Dunn
Executive Director
Missouri State Board of Embalmers
and Funeral Directors